



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 18, 1997

Mr. Allan B. Polunsky
Chair, Texas Board of Criminal Justice
P.O. Box 13084
Austin, Texas 78711

Letter Opinion No. 97-072

Re: Conflict of interest issue arising when client
of member of the Texas Board of Criminal Justice
bids on work for the Department of Criminal
Justice (ID# 39692)

Dear Mr. Polunsky:

On behalf of the Texas Board of Criminal Justice you request our opinion on a conflict of interest question. You inform us that a member of the Texas Board of Criminal Justice has an insurance client that is bidding on a construction contract with the Texas Department of Criminal Justice. The board member is a forty percent owner of the insurance company that provides performance bonds and casualty insurance to the company seeking the contract. If the insurance client secures the contract, its volume of business and payroll will increase and the board member's insurance company will make more money because the costs of the insurance it provides are directly affected by the size of the client's payroll. You inquire about the common-law conflict of interest raised by this situation.

The Board of Criminal Justice is authorized by statute to govern the Department of Criminal Justice. Gov't Code § 492.001. Assuming that the Board of Criminal Justice has final authority over the decision to contract, the common law-rules of conflict of interest will apply to the board, even if it delegates some portion of its authority to another person. *See* Attorney General Opinions JM-817 (1980), MW-179. The common-law conflict of interest rule, as stated in *Meyers v. Walker*, 276 S.W. 305, 307 (Tex. Civ. App.--Eastland 1925, no writ), bars a public officer from having a direct or indirect financial interest in a contract entered into by the governmental body of which he is a member. A contract entered into in violation of the common-law rule is void. *See, e.g., Delta Elec. Constr. Co. v. City of San Antonio*, 437 S.W.2d 602 (Tex. Civ. App.--San Antonio 1969, writ ref'd n.r.e.); *Bexar County v. Wentworth*, 378 S.W.2d 126 (Tex. Civ. App.--San Antonio 1964, writ ref'd n.r.e.); Attorney General Opinion MW-179 (1980); Letter Opinion No. 93-12 (1993). The board member in question has a financial interest for purposes of the *Meyers v. Walker* rule in a construction contract entered into by its insurance client, such that the board could not validly contract with the insurance client.¹

¹You inform us that section V.B of the Board Policy BP-01.04, *Standards of Conduct for the Texas Board of*
(continued...)

The potential conflict of interest would be avoided if the board member resigned from the board and if his replacement were appointed by the governor before the contract is awarded, so that he would not hold over in office pursuant to article XVI, section 17 of the Texas Constitution.

S U M M A R Y

Common-law conflict of interest rules prevent the Texas Board of Criminal Justice from entering into a contract in which a board member has a financial interest.

Yours very truly,

A handwritten signature in cursive script that reads "Susan L. Garrison".

Susan L. Garrison
Assistant Attorney General
Opinion Committee

¹(...continued)

Criminal Justice, incorporates the strict common-law conflict of interest standard.